

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SENATE BILL 1112

AN ACT

AMENDING SECTION 25-318, ARIZONA REVISED STATUTES; RELATING TO DISSOLUTION OF MARRIAGE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 25-318, Arizona Revised Statutes, is amended to
3 read:

4 25-318. Disposition of property; retroactivity; notice to
5 creditors; assignment of debts; contempt of court

6 A. In a proceeding for dissolution of the marriage, or for legal
7 separation, or in a proceeding for disposition of property following
8 dissolution of the marriage by a court which previously lacked personal
9 jurisdiction over the absent spouse or previously lacked jurisdiction to
10 dispose of the property, the court shall assign each spouse's sole and
11 separate property to such spouse. It shall also divide the community, joint
12 tenancy and other property held in common equitably, though not necessarily
13 in kind, without regard to marital misconduct. For the purposes of this
14 section only, property acquired by either spouse outside this state shall be
15 deemed to be community property if the property would have been community
16 property if acquired in this state.

17 B. IN DIVIDING PROPERTY, THE COURT MAY CONSIDER ALL DEBTS AND
18 OBLIGATIONS THAT ARE RELATED TO THE PROPERTY, INCLUDING ACCRUED OR ACCRUING
19 TAXES THAT WOULD BECOME DUE ON THE RECEIPT, SALE OR OTHER DISPOSITION OF THE
20 PROPERTY. THE COURT MAY ALSO CONSIDER THE EXEMPT STATUS OF PARTICULAR
21 PROPERTY PURSUANT TITLE 33, CHAPTER 8.

22 C. This section does not prevent the court from considering all actual
23 damages and judgments from conduct that ~~results~~ RESULTED in criminal
24 conviction of either spouse in which the other spouse or A child was the
25 victim, ~~OR~~ excessive or abnormal expenditures, destruction, concealment or
26 fraudulent disposition of community, joint tenancy and other property held in
27 common.

28 ~~B.~~ D. The community, joint tenancy and other property held in common
29 for which no provision is made in the decree shall be from the date of the
30 decree held by the parties as tenants in common, each possessed of an
31 undivided one-half interest.

32 ~~C.~~ E. The court may impress a lien on the separate property of either
33 party or the marital property awarded to either party in order to secure the
34 payment of:

- 35 1. Any interest or equity the other party has in or to the property.
- 36 2. Community debts that the court has ordered to be paid by the
37 parties.
- 38 3. An allowance for child support or spousal maintenance, or both.
- 39 4. All actual damages and judgments from conduct that ~~results~~ RESULTED
40 in criminal conviction of either spouse in which the other spouse or A child
41 was the victim.

42 ~~D.~~ F. The decree or judgment shall specifically describe by legal
43 description any real property affected and shall specifically describe any
44 other property affected.

1 ~~E.~~ G. This section applies through both prospective and retrospective
2 operation to property without regard to the date of acquisition.

3 ~~F.~~ H. In all actions for the dissolution of marriage or legal
4 separation, the court shall require the following statement in the materials
5 provided to the petitioner and to be served on the respondent:

6 Notice

7 In your property settlement agreement or decree of dissolution
8 or legal separation, the court may assign responsibility for
9 certain community debts to one spouse or the other. Please be
10 aware that a court order that does this is binding on the
11 spouses only and does not necessarily relieve either of you from
12 your responsibility for these community debts. These debts are
13 matters of contract between both of you and your creditors (such
14 as banks, credit unions, credit card issuers, finance companies,
15 utility companies, medical providers and retailers).

16 Since your creditors are not parties to this court case, they
17 are not bound by court orders or any agreements you and your
18 spouse reach in this case. On request, the court may impose a
19 lien against the separate property of a spouse to secure payment
20 of debts that the court orders that spouse to pay.

21 You may want to contact your creditors to discuss your debts as
22 well as the possible effects of your court case on your debts.
23 To assist you in identifying your creditors, you may obtain a
24 copy of your spouse's credit report by making a written request
25 to the court for an order requiring a credit reporting agency to
26 release the report to you. Within thirty days after receipt of
27 a request from a spouse who is party to a dissolution of
28 marriage or legal separation action, which includes the court
29 and case number of the action, creditors are required by law to
30 provide information as to the balance and account status of any
31 debts for which the requesting spouse may be liable to the
32 creditor. You may wish to use the following form, or one that
33 is similar, to contact your creditors:

34 Creditor notification

35 Date: _____

36 Creditor name and

37 Address: _____

38 _____

39 _____

40 Within thirty days after receipt of this notice, you are
41 requested to provide the balance and account status of any debt
42 identified by account number for which the requesting party may
43 be liable to you.

44 Name: _____

45 Address: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

(signature)

(printed name)

~~G.~~ I. On the written request of any party to a pending dissolution of marriage or legal separation action, the court, except for good cause shown, shall issue an order requiring any credit reporting agency to release the credit report as to the spouse of the requesting party on payment by the requesting party of any customary fee for providing the credit report.

~~H.~~ J. On the request of either party and except for good cause shown, the court shall require the parties to submit a debt distribution plan that states the following:

1. How community creditors will be paid.
2. Whether any agreements have been entered into between the parties as to responsibility for the payment of community debts, including what, if any, collateral will secure the payment of the debt.
3. Whether the parties have entered into agreements with creditors through which a community debt will be the sole responsibility of one party.

~~I.~~ K. The following form may be used to verify agreements with creditors:

Agreement with creditor

The parties to this agreement include _____
and _____ who are parties to a dissolution of marriage action filed in _____ county superior court, Arizona, case number _____ and _____ who is a duly authorized representative of _____ (creditor).

The undersigned parties agree that the debt owed by the parties to _____ (creditor) is to be disposed of as follows (check one):

___ The debt is the joint responsibility of the parties, with payment to be made on the following terms: _____

___ The balance of the debt is the sole responsibility of _____ and the creditor releases _____ from any further liability for that debt, with payment to be made on the following terms: _____

___ The debt has been paid in full as of this date.
We the undersigned acknowledge this agreement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

Dated: _____

Debtor Debtor

Creditor's representative

Subscribed and sworn to before me this ____ day of _____,
_____.

Notary Public

~~J~~ L. If the parties are not able to agree to a joint debt distribution plan pursuant to subsection ~~H~~ J, the court may order each party to submit a proposed debt distribution plan to the court. In its orders relating to the division of property, the court shall reflect the debt distribution plan approved by the court and shall confirm that any community debts that are made the sole responsibility of one of the parties by agreement with a creditor are the sole responsibility of that party.

~~K~~ M. An agreement with a creditor pursuant to subsection ~~I~~ K that assigns or otherwise modifies repayment responsibility for community debts secured by real property located in this state shall include all of the following:

- 1. A legal description of the real property.
- 2. A copy of the note and recorded security instrument, the repayment of which is to be assigned or modified by the agreement with a creditor.
- 3. A written and notarized acknowledgment that is executed by all parties to the debt, including the lender, and that states one of the following:
 - (a) The terms for the repayment of the debt remain unchanged.
 - (b) The terms for the repayment of the debt have been modified and, beginning on the date of the execution of the acknowledgment, the creditor has agreed that one of the debtors assumes the sole responsibility for the debt and that the other debtor is released from any further liability on the debt.
 - (c) The debt is paid in full and all parties to the debt are released from any further liability.

~~L~~ N. An agreement executed pursuant to subsection ~~K~~ M shall be recorded by either party in the county in which the real property is located.

~~M~~ O. After an agreement is recorded pursuant to subsection ~~L~~ N, either party may request that on payment of the title company's fees for the document a title company authorized to do business in this state provide the requesting party with a lien search report or other documentary evidence of liens and other agreements of record in the title to the property.

1 ~~N.~~ P. If a party fails to comply with an order to pay debts, the
2 court may enter orders transferring property of that spouse to compensate the
3 other party. If the court finds that a party is in contempt as to an order
4 to pay community debts, the court may impose appropriate sanctions under the
5 law. A party must bring an action to enforce an order to pay a debt pursuant
6 to this subsection within two years after the date in which the debt should
7 have been paid in full.

8 ~~Q.~~ Q. Within thirty days after receipt of a written request for
9 information from a spouse who is a party to a dissolution of marriage or
10 legal separation action, which includes the court and case number of the
11 action, a creditor shall provide the balance and account status of any debts
12 of either or both spouses identified by account number for which the
13 requesting spouse may be liable to the creditor.

14 R. IF ANY PART OF THE COURT'S DIVISION OF JOINT, COMMON OR COMMUNITY
15 PROPERTY IS IN THE NATURE OF CHILD SUPPORT OR SPOUSAL MAINTENANCE, THE COURT
16 SHALL MAKE SPECIFIC FINDINGS OF FACT AND SUPPORTING CONCLUSIONS OF LAW IN ITS
17 DECREE.